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Chairperson: Ms. Rodriguez-Pineda (Vice-Chairperson) ..... (Guatemala)

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The meeting was called to order at 3.05 p.m.

Agenda item 74: Report of the United Nations Commission on International Trade Law on the work of its forty-first session (*continued*) (A/62/17 and A/63/17)

1. **Mr. Lamine** (Algeria), welcoming the adoption by the United Nations Commission on International Trade Law (UNCITRAL) of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (A/63/17, annex I), said that the convention would promote legal security, improve the efficiency of the international carriage of goods and offer new opportunities for isolated markets to participate in international trade.

2. His delegation supported the proposals for updating the UNCITRAL Model Law on Procurement of Goods, Construction and Services and the Guide to Enactment to reflect new practices, in particular those resulting from the use of electronic communications in procurement and the experience gained in the use of the Model Law as a basis for law reform in public procurement. As for the revision of the UNCITRAL Arbitration Rules, his delegation shared the Commission's view about the importance of a generic approach that sought to identify common denominators applying to all types of arbitration irrespective of the subject matter of the dispute. Working Group II (Arbitration and Conciliation) should also consider at its future sessions the extent to which the revised UNCITRAL Arbitration Rules should include more detailed provisions concerning investor-State dispute settlement or administered arbitration. His delegation was flexible as to the form of such an instrument.

3. He noted, lastly, the progress made by Working Group V (Insolvency Law) on the work of compiling practical experience with negotiating and using cross-border insolvency agreements, in particular following the further consultations that had been held with judges and insolvency practitioners.

4. **Ms. Miller** (United States of America) said that in 2008 the Commission and its working groups had continued to recognize that, despite liberalization of trade through international agreements, the failure also to upgrade commercial law had meant that trade liberalization was less effective and its benefits did not reach as many sectors as it might. The Commission's work continued to help close that gap and reflected the practical achievements possible within the United Nations system.

5. The completion of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea had been a significant development. The updating and modernizing of laws dating back many years, such as the 1936 Carriage of Goods by Sea Act in the United States, were particularly necessary where such laws still regulated an industry that had changed remarkably in the meantime.

6. Prior to the negotiations on the draft Convention, United States shipping and carrier interests had agreed to defer seeking new domestic legislation and to support the Government's participation in the UNCITRAL negotiations, provided that the process was successfully concluded within a reasonable period of time and was consistent with their key objectives, namely, replacement of the "port-to-port" scope of application with a modified "door-to-door" scope, often covering inland transportation as well as a sea voyage; inclusion of a two-part rule on jurisdiction and forum selection clauses; and inclusion of a provision whereby the parties to certain types of contracts of carriage containing various safeguards could derogate from the terms of the agreement. The draft Convention approved by the Commission achieved all of those objectives. It was a major improvement over the current situation, and her delegation hoped that it would receive widespread support.

7. **Ms. Gladstone** (United Kingdom) said that, in general, her Government supported the draft Convention and was currently working with the key stakeholders in the maritime and financial services industries with a view to achieving a consensus on ratification. It also actively supported the work of Working Group I (Procurement) in its discussion on proposals for a review of the Model Law, with a particular focus on procedures for framework agreements, review procedures and remedies. Her Government had also participated in Working Group II and the revision of the UNCITRAL Arbitration Rules; the Working Group should continue its focus on updating only those elements of the rules that, in the light of experience, needed amendment. It was also important for the work to be taken forward in a timely manner, with a view to completion in time for the 2009 Commission meeting.

8. The United Kingdom continued to play an active role in Working Group VI (Security Interests), which had begun work on an annex to the draft Legislative Guide on Secured Transactions, to cover intellectual property issues. The Group should ensure that the key objective of promoting secured credit was achieved in a way that did not interfere with the objectives of intellectual property law, namely, to prevent the unauthorized use of intellectual property and to protect the value of intellectual property in order to encourage further innovation and creativity. The United Kingdom also actively supported the work being done on insolvency law and the current review of the treatment of corporate groups in insolvency. Her delegation was pleased to continue participating in that work with a view to establishing international guidelines and best practice.

9. **Mr. Tsantzalos** (Greece) said he supported the purpose of the new draft Convention in principle, as a means of harmonizing and unifying international trade law for the carriage of goods. Lack of uniformity, owing to the proliferation of conventions and domestic legislation in force in different jurisdictions, inevitably detracted from commercial and legal certainty. That was a factor of paramount importance to all parties engaged in the international carriage of goods. A new convention should be broadly accepted, in order to provide for a stable legal framework that balanced rights and liabilities and fairly allocated risk among all parties concerned. As a leading maritime nation of the world, Greece would make its decision about ratification in due course, taking into consideration all essential aspects of the draft Convention and the need for an updated regime of trade rules on the international carriage of goods by sea.

10. **Mr. Kendrick** (Canada) applauded the work of UNCITRAL and noted with satisfaction the progress that had been made on framework agreements and conflicts of interest in the context of the revision of the Model Law on Procurement. Progress from the results of the first session of the working group on security interests, dealing with security in intellectual property rights, was also to be welcomed. Those rights constituted an important potential source of financing for many businesses, and the Commission's work would therefore be of great benefit for the global business community. He welcomed the Commission's decision to undertake work on transparency in the resolution of investor-State disputes, especially given the strong level of support expressed by the vast majority of States at the Commission session and the importance of the issue for all States.

11. With respect to the rules and working methods of the Commission, he noted the usefulness of the documents that had been prepared by the Secretariat to inform State and non-State participants. Canada strongly supported the Commission's decision to have a reference document prepared for use by chairpersons, delegates, observers and the Secretariat itself. In consulting with experts, the Secretariat should endeavour to increase the availability of working drafts and other preparatory materials in languages other than English. As for new areas of work, his delegation would welcome the development of a guide for the New York Convention as a tool to promote its uniform interpretation and application, thereby avoiding uncertainty and limiting the risk that State practice would diverge from the essence of the Convention.

12. **Ms. Kamal** (Malaysia) said that, as a member of the Commission, her country was keen to contribute to the development of international trade law by, inter alia, promoting the uniform application of relevant laws. Items of particular note in the report of the Commission on its forty-first session (A/63/17) included the progress reports of the various Working Groups, areas of possible future work and the conferences held to mark the fiftieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), with emphasis on the need for continuous monitoring of its implementation. Malaysia was fully committed to the fulfilment of its obligations under that Convention, to which it had acceded in 1985. It was also an active participant in Working Group II (Arbitration and Conciliation), in which connection she agreed that, in the interest of meeting the deadline for finalizing the revision of the Arbitration Rules of the Commission (the UNCITRAL Arbitration Rules), the inclusion of specific provisions on treaty-based arbitration was undesirable. Neither should the revision be delayed by any future work on investor-State disputes.

13. Malaysia was similarly active in Working Group VI (Security Interests), in which context it was closely monitoring developments pursuant to the adoption of the draft Legislative Guide on Secured Transactions. It had also participated in the Group's discussions on security rights in intellectual property, from which it

had additionally benefited to build its own fledgling expertise in that particular area of law.

14. **Mr. Maqungo** (South Africa) said that international trade had dramatically increased in his country following the demise of the apartheid regime in the early 1990s and the ensuing normalization of trade relations. As a result, South Africa had witnessed first-hand the importance of international trade as a tool for socio-economic development, job creation and poverty reduction. The transportation of goods was an integral part of that trade, and in that connection he looked forward to the harmony and legal certainty that would be achieved with the adoption of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, which his delegation had been involved in negotiating. It was moreover essential to implement modern private law standards in international trade in a manner that was not only acceptable to all States but also promoted cooperation for strengthening of the rule of law in commercial relations. The Commission's capacity-building activities in developing countries, which took the form of training and dissemination of its model laws and of relevant case law, therefore had his delegation's support. His country had itself benefited from those model laws and was also a party to the New York Convention. It endorsed the revision of the UNCITRAL Arbitration Rules currently under way and additionally favoured the elaboration of transparency rules that were universally applicable on the basis of treaties concluded by the investor State.

15. The progress accomplished by Working Group VI (Security Interests) on the subject of security rights in intellectual property was encouraging, particularly given the importance of credit availability for developing countries; such countries should be permitted to use both tangible and intangible property as security for credit. To that end, work should be undertaken as expeditiously as possible in order to provide comprehensive guidance for States as to adjustments needed to avoid inconsistencies between secured financing law and intellectual property law. He urged States that had not yet done so to sign, ratify or accede to the conventions elaborated by the Commission and to use its model laws in drafting their national legislation. He was also supportive of work in such new areas as commercial fraud, including the development of recommendations for fraud prevention.

16. **Mr. Shah** (Pakistan) congratulated the Commission on its completion of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. His delegation hoped that the draft Convention would not only lower the cost of international trade but would also reduce the need for bilateral treaties on the subject.

17. He commended the Commission's work on promoting the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and expressed the hope that all work on revision of the UNCITRAL Arbitration Rules would be guided by the principle of consensus. In order to ensure the smooth growth, unification and harmonization of international trade law, it was essential to remove all artificial obstacles and legal impediments facing the developing countries and to enhance capacity-building activities for those countries.

18. **Mr. Appreku** (Ghana) expressed his support for the funding appeal launched to promote the Commission's effective discharge of its mandate, as well as his gratitude for the Commission's participation in a capacity-building seminar, held in Accra in June 2008, for legal experts from members of the Economic Community of West African States (ECOWAS) and officials from the secretariat of the West African Monetary Institute (WAMI). WAMI now required further technical assistance from such bodies as the Commission in pursuance of its efforts at the subregional level to harmonize business laws in the ECOWAS zone. The Commission could also serve as an impartial facilitator in bridging the gap between the commercial legal regime applicable to States members of the Organization for the Harmonization of Business Law in Africa (OHADA) and that governing non-OHADA members of ECOWAS.

19. As for the recommendation adopted regarding the interpretation of article II, paragraph 2, of the New York Convention, it expanded the scope of definition of the term "agreement" in writing insofar as it stated that the forms of agreement specified under that article were not exhaustive. The recommendation adopted with regard to article VII, paragraph 1, was also acceptable in that it enhanced the rights of an interested party to seek recognition of the validity of an arbitration agreement under the law or relevant treaties of a country in cases where reliance was placed in such agreement.

20. Lastly, his delegation looked forward to participating actively in the consideration of various draft legal instruments, with particular reference to the provisions of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea governing the carriage or transit of goods by landlocked countries through the territories of coastal States.

21. **Ms. Noland** (Netherlands) said that her country was set to continue its active participation in the work of the Commission, to which it attached great importance. In that context, finalization of the draft Convention for submission to the General Assembly was a significant achievement. Her country therefore looked forward to its adoption at the current session, in which case it would be honoured to host a celebratory event, including a signing ceremony, in Rotterdam from 21 to 23 September 2009.

22. **Mr. Erwin** (Indonesia) said that he welcomed the finalization and approval of the draft Convention, an important instrument to which great efforts had been devoted, and that he looked forward to its adoption by the General Assembly. Given the growing membership and agenda of the Commission, its working methods were a matter of concern, in particular with regard to decision-making and the participation of non-State entities in its work. In that context, the note describing current practices (A/CN.9/653) was much appreciated. His delegation was among those which favoured decision-making by consensus and clarification of the manner in which consensus operated in practice. It also favoured the broadly held view that the approach to the role of observers should continue to be based on flexibility and inclusiveness. Only Commission members should be permitted to vote, however. As for the Secretariat, it should be restructured as a division in order to ensure that it continued to function effectively, despite its growing burden of work.

The meeting rose at 3.55 p.m.